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In The

Supreme Court of the United States

October Term, 1982

KANE GAS LIGHT AND HEATING COMPANY,
Petitioner,

VS.

**INTERNATIONAL BROTHERHOOD OF FIREMEN AND
OILERS, LOCAL 112,**
Respondent.

*On Petition for a Writ of Certiorari to the United States Court
of Appeals for the Third Circuit*

SUPPLEMENTAL BRIEF FOR PETITIONER

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Since filing its reply to the respondent's opposition brief, on February 15, 1983, petitioner has learned only today, February 16, of a recent decision (not yet reported) entered January 28, 1983 by the Supreme Court of Pennsylvania which gives important judicial support of the petitioner's contentions in this case.

Attached as Appendix A, is a copy of the unanimous opinion of that court, written by Chief Justice Samuel J. Roberts in the

case of *Philadelphia Housing Authority v. Union of Security Officers No. 1* (Pa. Supreme Court Appeal No. 81-3-404).

At issue on that appeal was the validity of an award of an arbitrator which reinstated a security officer employed by appellant, Philadelphia Housing Authority, whom the Authority had discharged. The Authority's petition to modify or correct the arbitrator's award was denied by the Court of Common Pleas of Philadelphia, and the denial was affirmed by a divided panel of the Commonwealth Court [*Philadelphia Housing Authority v. Union of Security Officers No. 1*, 55 Pa. Cmwlth. Ct. 640, 423 A. 2d 1123 (1980)]. The Supreme Court of Pennsylvania granted allowance of appeal, and by its order entered January 28, 1983, reversed the order of the Commonwealth Court and vacated the award of the arbitrator.

The factual situations and the legal principles involved are similar in both the *Philadelphia Housing* case and the pending *Kane Gas* case.

The Pennsylvania Supreme Court concluded that on the facts found by the arbitrator in the *Philadelphia Housing* case, that he was without authority to overturn the Philadelphia Housing Authority's discharge of the employee, and it held that the arbitrator's decision to reinstate the employee was unjustified by any terms that were or could properly have been contemplated by the parties to the collective bargaining agreement. The Pennsylvania Supreme Court's reasoning can equally apply to the present case.

Since the reasoning and holding of the Supreme Court of Pennsylvania and the United States Court of Appeals for the Third Circuit appear to be in conflict on the same matter — judicial review of an arbitrator's award — the petitioner suggests that such conflict should be considered by the Supreme Court of the

United States as an additional reason for granting the writ of certiorari in this pending case.

Respectfully submitted,

JOHN A. BOWLER
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Attorneys for Petitioner

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

No. 81-3-404

ARGUED: October 26, 1982

FILED: January 28, 1983

PHILADELPHIA HOUSING AUTHORITY,

Appellant

V.

UNION OF SECURITY OFFICERS #1

Appeal from an order of the Commonwealth Court at No. 862 C.D. 1979, entered December 31, 1980, affirming an order of the Court of Common Pleas of Philadelphia, at No. 65 January Term, 1979, entered March 27, 1979.

OPINION OF THE COURT

ROBERTS, C.J.

At issue on this appeal is the validity of an award of an arbitrator which reinstated a security officer employed by appellant Philadelphia Housing Authority whom the Authority had discharged. The Authority's petition to modify or correct the arbitrator's award was denied by the Court of Common Pleas of Philadelphia, and the denial was affirmed by a divided panel of the Commonwealth Court. *Philadelphia Housing Authority*

v. Union of Security Officers No. 1, 55 Pa.Cmwlth.Ct. 640, 423 A.2d 1123 (1980). We granted allowance of appeal, and now reverse the order of the Commonwealth Court and vacate the award of the arbitrator.

The security officer, Richard Green, was discharged on March 27, 1979, for allegedly using his position to obtain for his own benefit \$900 belonging to Henry Herbert, an elderly resident at the housing project where Green had worked. Following Green's discharge, appellee Union of Security Officers No. 1 sought reinstatement of Green pursuant to the grievance procedure provided in the collective bargaining agreement between the parties. The agreement provided that "[t]he Authority may for just cause take whatever disciplinary action it deems appropriate at its discretion." When the parties failed to reach an agreement, the union invoked its right to arbitration.

At the arbitration hearing, the arbitrator found that Green, by virtue of a relationship of trust and confidence with Herbert, had induced Herbert to deposit \$900 in a joint bank account, ostensibly as a fund for Herbert's funeral expenses, that Green had withdrawn the money for his own use, and that Green had lied to his employer during the investigation of his conduct. Despite these findings, the arbitrator reinstated Green without loss of seniority or other benefits, believing that the loss of back pay for the eight months during which Green had been suspended was "sufficient punishment."

The arbitrator's reinstatement of Green was apparently based on the arbitrator's finding that Green had induced Herbert to part with his money by playing on their personal friendship and not, as alleged by the Housing Authority, by taking advantage of his position as a security officer. Such a distinction, however, does not mitigate the severity of the offense or justify the arbitrator's reversal of the Authority's decision to discharge a

dishonest employee. The defrauding of an elderly tenant, whether friend or stranger, by a housing authority security officer is unquestionably conduct justifying the officer's discharge. Indeed, such dishonest conduct constitutes an affront to the integrity of the entire Housing Authority security force.

It is well settled that an arbitrator's award will be upheld if the arbitrator's interpretation of the collective bargaining agreement is reasonable. See, e.g., *International Brotherhood of Firemen and Oilers, AFL-CIO Local 1201 v. School District of Philadelphia*, 465 Pa. 356, 350 A.2d 804 (1976). Here, however, it is manifestly unreasonable to conclude that the Housing Authority could have intended to bargain away its absolute responsibility to ensure the integrity of its housing security force by discharging an officer who has defrauded one of the very people whom he is paid to protect. Having found that security officer Green had defrauded an elderly tenant and then lied about his conduct, the arbitrator was without authority to overturn the Authority's discharge of Green. As the arbitrator's decision to reinstate Green was unjustified by any terms that were or could properly have been contemplated by the parties to the collective bargaining agreement, the order of the Commonwealth Court affirming that decision must be reversed, and the award of the arbitrator vacated.

Order of the Commonwealth Court reversed, and the award of the arbitrator vacated.

Former Chief Justice O'BRIEN did not participate in the decision of this case.